Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket 98-147

COMMENTS OF ICG TELECOM GROUP, INC.

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SUMMARY

In the order portion of the Notice, the Commission concludes that ILECs are subject to Section 251 of the Communications Act in their provision of advanced telecommunications services. ICG applauds this result. Section 251 was intended to open the local market to competition by ensuring that new entrants would have access to the incumbents' networks. As ever-increasing amounts of traffic are moved from the circuit-switched voice network to packet-switched data networks, it would render Section 251 meaningless if it were read to include only conventional voice telephony.

In the Notice portion of the item, however, the Commission proposes to allow the ILECs to offer advanced telecommunications services through separate, nonregulated affiliates that would *not* be subject to Section 251. ICG believes that the Commission's reading of Section 251 is beyond its legal authority. If Section 251 means what it says, the ILECs cannot escape their obligations thereunder by a shuffling of corporate entities.

The Commission's proposal will eviscerate the correct policy result reached in the order portion of the Notice by creating a vehicle for the ILECs to make an end run around Section 251. ICG is very concerned that the Commission's proposal will allow the ILECs to divert facilities and service offerings to their advanced services affiliates. As the ILECs shift as much of their operations as possible to their advanced services affiliates in order to escape regulation, the ILECs will become empty shells, whose obligation under Section 251 to make their facilities available to competitors is meaningless. In addition, under the Commission's proposal, the ILEC and its affiliate can work in concert to ward off competition.

The Commission should adopt national standards for collocation for all services. The standards should reflect a fundamental re-thinking of the traditional collocation arrangements currently being offered by ILECs. Existing collocation arrangements, which vary widely from ILEC to ILEC and central office to central office, are inefficient, expensive, and too complex for the needs of today's competitive entrants.

The Commission should eliminate ILEC restrictions on the equipment that may be collocated. Such restrictions are vestiges of the past. For example, it would not serve anyone's purpose to differentiate between circuit-switched and packet-switched equipment in determining which type of equipment may be collocated. The approach of restricting switching equipment appears to be left over from an overly-cautious first generation collocation approach that does not fit with the competitive local marketplace envisioned by the Commission today. The Commission should go a step further and adopt rules permitting the collocation of *any* equipment used by carriers in the provision of local exchange or exchange access voice and data services. The sole criteria for determining whether a particular type of equipment may be collocated should be its size and the space available at the location in question. Leaving the door open for the ILECs to impose any other restrictions simply invites them to act as network police against their competitors.

The national model for collocation to minimize space requirements should be cageless collocation, both in the advanced services context and generally. Such a model simultaneously increases the amount of space available for collocation and permits CLECs to achieve greater cost efficiency by providing them with an amount of space that does not exceed their needs. The Commission should also adopt national standards to govern the

collocation ordering process, preparation of the collocation space, and deployment of the collocated equipment. In particular, the Commission should require standardized service and installation intervals within which all ILECs must respond to CLEC collocation requests.

As with collocation of CLEC equipment at ILEC premises, the Commission should adopt national standards as minimum requirements for local loops that apply to all services. National standards would help ensure that the ILECs deploy the pre-provisioning processes, provisioning processes, and engineering processes necessary to support the policies set forth in the Act and in the Commission's rules, including the deployment of advanced services. It is also of primary importance that ILECs be required to provision for CLECs *all* digital standards, not just the one or two standards that an ILEC itself elects to deploy (such as DSL).

The Commission should declare that all network elements used by the ILEC or its affiliate in the provision of advanced services are individual UNEs. With regard to resale, because advanced services will be offered primarily to residential and business end users, including ISPs, the Commission should require that all telephone exchange services predominantly offered to end users as advanced services be subject to resale under Section 251(c)(4), without regard to their classification by the Commission or ILEC as telephone exchange service or exchange access. Such a finding should encompass all advanced services, including those configured in the future, and not be limited to DSL services.

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COMMENTS OF ICG TELECOM GROUP, INC.

ICG Telecom Group ("ICG") hereby submits its comments regarding the Notice of Proposed Rulemaking released August 7, 1998 in the above-captioned proceeding (the "Notice"). Section I of these comments addresses the Commission's proposal to allow incumbent local exchange carriers ("ILECs") to provide advanced telecommunications services through separate, nonregulated subsidiaries. Section II urges the Commission to take extensive measures to promote local competition by supporting the efforts of competitive local exchange carriers ("CLECs") to enter the market on a level playing field.

STATEMENT OF INTEREST

ICG, the largest "facilities-based" CLEC that is not affiliated with a major interexchange carrier ("IXC"), has an interest in this proceeding. ICG is a leading national CLEC with extensive fiber-optic networks. ICG offers local, long distance and enhanced

telephony and data services in the states of California and Colorado, as well as the Ohio Valley and parts of the Southeastern United States.

ICG has merged with NETCOM On-Line Communication Services, Inc. ("NETCOM"). NETCOM is one of the leading ISPs in the country, and as of December 31, 1997, was providing service to approximately 540,000 customers and over 12,000 professional businesses.

DISCUSSION

I. APPLICABILITY OF SECTION 251(C) TO INCUMBENT LOCAL EXCHANGE CARRIERS

In the order portion of the Notice, the Commission concludes that ILECs are subject to Section 251 of the Communications Act, as amended (the "Act"), 47 U.S.C. § 251, in their provision of advanced telecommunications services. ICG applauds this result. ICG agrees with the Commission that both the plain language of the Act and the pro-competitive policies that it is designed to promote require such treatment of advanced services. Section 251 was intended to open the local market to competition by ensuring that new entrants would have access to the incumbents' networks. As ever-increasing amounts of traffic are moved from the circuit-switched voice network to packet-switched data networks, it would render Section 251 meaningless if it were read to include only conventional voice telephony. With its ruling, the Commission has taken an important step in ensuring that real competition can flourish as technologies change and evolve.

In the Notice portion of the item, however, the Commission proposes to allow the ILECs to offer advanced telecommunications services through separate, nonregulated

affiliates that would *not* be subject to Section 251. In the Commission's view, if the advanced services affiliate is sufficiently independent from its counterpart ILEC, it is excluded from Section 251(h)'s definition of "incumbent local exchange carrier" and thus from the obligations imposed on ILECs by Section 251(c).

ICG believes that the Commission's interpretation of Section 251 is unfounded. First and foremost, as discussed in Section A.1 below, ICG believes that the Commission's reading of Section 251 is beyond its legal authority. If Section 251 means what it says, the ILECs cannot escape their obligations thereunder by a shuffling of corporate entities.

Second, as discussed in Section A.2 below, the Commission's proposal will eviscerate the correct policy result reached in the order portion of the Notice by creating a vehicle for the ILECs to make an end run around Section 251. ICG is very concerned that the Commission's proposal will allow the ILECs to divert facilities and service offerings to their advanced services affiliates. As the ILECs shift as much of their operations as possible to their advanced services affiliates in order to escape regulation, the ILECs will become empty shells, whose obligation under Section 251 to make their facilities available to competitors is meaningless.

Third, as discussed in Section A.3 below, under the Commission's proposal, the ILEC and its affiliate can work in concert to ward off competition. The advanced services affiliate would not be an economically independent entity under the Commission's proposal. Rather, the affiliate would be either a wholly-owned subsidiary of the ILEC or of the ILEC's holding company. This will allow the ILEC and its affiliate to engage in a number of anti-competitive strategies. For example, if the ILEC was in danger of losing a

valuable customer to a CLEC, the ILEC's affiliate could purchase from the ILEC the facilities necessary to provide service to the customer and then re-price the service at off-tariff rates. Even if this resulted in a loss to the affiliate, it would still make sense from the perspective of the overall corporate enterprise because it would prevent the loss of the revenue generated by the customer to a real competitor.

While the Commission acknowledges the possibility that ILECs "could improperly discriminate against competing providers . . . in order to gain a competitive advantage for their advanced services affiliates," Notice at ¶ 97, the Commission does not address the concerns with its proposal identified above. Because the Commission does not focus on these very real threats to competition, the safeguards it has proposed to ensure that the ILECs and their advanced services affiliates operate independently are inadequate. If the Commission decides to proceed with its separate subsidiary proposal, it is critical that it put into place additional safeguards. In Section B below, ICG proposes a number of additional protections designed to ensure that the ILECs' advanced services affiliates are completely independent entities by making the affiliates solely responsible for their own bottom line.

A. The ILECs Should Not Be Allowed to Offer Advanced Telecommunications Services Through Nonregulated Affiliates

1. The Commission Lacks the Authority to Adopt its Separate Subsidiary Proposal

As a threshold matter, ICG believes that the Commission's proposal to allow the ILECs to offer advanced services through separate, nonregulated subsidiaries flies in the

face of Section 251 and is thus beyond the scope of the Commission's lawful authority. ICG fully supports the comments of the Association for Telecommunications Services ("ALTS") and the Competitive Telecommunications Association ("CompTel") with respect to the Commission's authority to permit ILECs to escape the obligations of Section 251 by offering advanced services through nonregulated separate subsidiaries. Rather than repeat those arguments, ICG hereby incorporates herein by reference the relevant portions of the ALTS and CompTel comments.

2. The Separate Subsidiary Option Will Allow the ILECs to Circumvent Their Section 251 Obligations

Not only is the Commission's proposal legally questionable, permitting ILECs to offer advanced services through a nonregulated affiliate is very troubling from a policy perspective. The Commission's proposal threatens to undercut its determination that the ILECs should be bound by Section 251 in their provision of advanced services. The danger is that the ILECs can divert so much of their operations to their unregulated affiliates that the regulated ILEC entity that is subject to Section 251 and a host of other regulatory safeguards will become little more than a shell.[1]

The concerns arising from the ILECs using their advanced services affiliates to circumvent Section 251 is exacerbated by the Commission's overly-broad definition of

[1] A related danger posed by the Commission's proposal is that it will allow the Bell operating companies ("BOCs") to gain access prematurely to in-region long distance markets. The BOCs need full compliance with Section 251 before they will be permitted to offer interLATA service under Section 271. To the extent that the BOCs can shift large portions of their operations to nonregulated affiliates not governed by Section 251, the bar for Section 271 will be drastically—and artificially—lowered.

advanced services. While much of the Notice speaks in terms of various xDSL technologies, the Commission makes clear that advanced services can encompass much more: "For purposes of this item, we use the term 'advanced services' to mean wireline, broadband telecommunications services, such as services that rely on digital subscriber line technology (commonly referred to as xDSL) and packet-switched technology." Notice, ¶ 3.

The danger is that instead of becoming a limited-purpose affiliate, the advanced services affiliates envisioned by the Commission will come to be the principal service provider. Indeed, many commenters are already predicting that in the near future, telephony will become so "data-centric" that conventional voice telephony will be nothing more than an adjunct to data service offerings. As new technologies continue to replace the old twisted copper pair, as they inevitably will, the ILECs will be free to place all their new facilities and services in their affiliates simply by labeling them "advanced services." To illustrate the overbreadth of the Commission's proposal, one only need note that the Commission offers "packet-switching" as an example of an advanced service. Notice at ¶ 3. Packet-switching is hardly a new technology; the Commission held that certain packet-switching technologies were basic transmission services nearly two decades ago. *See* Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II), 77 FCC Rcd 2d 384, 420 (1980). The ILECs cannot be allowed to use the Commission's advanced services affiliate proposal as a means to essentially provide all their services outside of regulatory curbs.

3. The Safeguards Proposed by the Commission Will Not Prevent the ILECs and Their Affiliates from Acting in Concert, to the Detriment of Competitors

In addition to permitting wholesale shifting of the ILECs' operations to their affiliates, the Commission's separate subsidiary proposal will afford the ILECs an anti-competitive opportunity to lock-up the their existing customers and pursue new customers by acting in concert with their affiliates. Under the Commission's proposal, the affiliate could be a wholly-owned subsidiary of the ILEC. This means that any transactions between the ILEC and the affiliate will be revenue-neutral from the perspective of the enterprise as a whole.[2] This in turn will lead to joint decision-making and business planning. Neither the ILEC nor the affiliate will have an incentive to operate the affiliate as an independent business. Instead, the affiliate will be operated to maximize the enterprise's overall revenue. While the affiliate may cannibalize some of the ILEC's business, that is from the ILEC's perspective a vastly preferable result to losing that same business to a real CLEC competitor. So long as all of the revenue stays in the family, the overall enterprise, and its investors, would be indifferent as to which of its entities generated the revenue.[3]

For example, the advanced services affiliate would have the ability to introduce targeted, customer-specific contract service arrangements ("CSAs"), as well as reprice

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[2] This is particularly true under price cap regulation because the ILECs are not subject to rate of return regulation and, thus, everything goes to the ILEC's bottom line.

[3] This would be true even if the ILECs structure their operations so that the regulated ILEC and the nonregulated advanced services affiliate are both subsidiaries of the same holding company. *See* Notice at ¶ 11, n.17. Investors in the holding company will have little reason to care whether the profits are produced by one entity or the other, as long as the bottom line result is attractive.

existing services, without any obligation to offer these services at a wholesale discount price to its competitors. Obviously, if the same services were offered by the ILEC, they would be provided at tariffed retails rate from which potential competitors could obtain a discount. The incentive for the ILEC, therefore, would be to introduce new services through its affiliate, because the new services would then not be available to the ILEC's potential resale competitors at a resale discount.

The ILEC and its affiliate will also be able to gain an anticompetitive advantage over CLECs by having the affiliate recruit the ILEC's lucrative CSA customers. The ILECs have sought to deter CLECs from being able to do the same thing by imposing steep "termination" charges on CSA customers. While the affiliate would technically be assessed the same charge, it would be nothing more than the shifting of revenue from one corporate entity to another.

* * *

In sum, the ILEC advanced services affiliate will be able to establish itself as an alter ego free of Section 251 obligations. The ILEC has every incentive to shift the bulk of its operations to the affiliate, leaving the ILEC a shell of its former self. The presence of this affiliate will not lead to true local competition; it will be no more than an extension of a brand name from one entity (the ILEC) to another (the advanced services affiliate).

B. To the Extent the ILECs Are Permitted to Offer Advanced Telecommunications Services Through Nonregulated Affiliates, Robust Safeguards Must Be Put into Place to Protect Competition

If the Commission decides to move forward with its nonregulated separate subsidiary proposal, it must put into place robust protective measures to ensure that the

ILECs cannot use their advanced services affiliates to avoid their Section 251 and other regulatory obligations. The Commission recognized this in the Notice, and proposed a number of measures designed to achieve that goal. While, commendably, the separate subsidiary structure proposed by the Commission is a step in the right direction, it does not go far enough. In many instances, the measures proposed by the Commission are only a starting point, and there are important protections that the Commission has overlooked entirely. To be effective in curbing the ILECs' ability to use their advanced services affiliates to circumvent Section 251 and ward off competition, the Commission must put into place safeguards which will, as far as possible, remove the ILEC's incentives to do so.

1. Corporate Structure

To remove the incentive for the ILEC and its affiliate to engage in anti-competitive collaboration, the Commission must ensure that the ILEC and the affiliate are completely independent corporate entities. To this end, the Commission proposes requiring that (1) "the incumbent and affiliate must maintain separate books, records, and accounts" and (2) "the incumbent and advanced services affiliate must have separate owners, directors, and employees." Notice at ¶ 96.

While these measures are important, they do not go nearly far enough. As discussed above, the ILEC and its affiliate will have every reason to make collective decisions from the perspective of the entire enterprise rather than as individual entities. Requiring them to keep separate books and accounts will not alleviate this problem. If both the ILEC and its affiliate are contributing to the same overall bottom line then it does

not matter if one shows a loss and one a profit, so long as the overall enterprise is earning sufficient profits.

In order to ensure real independence, the Commission must require significant public ownership in the ILEC's advanced services affiliates. If the affiliate's shares are owned and traded by persons or institutions expecting to earn profits from the affiliate's operations without regard to the affiliate's relationship with the ILEC or overall parent company, the affiliate will have the proper incentive to look to its own—rather than its corporate family's—bottom line. Not only will the affiliate owe its shareholders a fiduciary duty to maximize their profits, but it would also be subject to suits from its shareholders if it compromises their interests.

The Commission should carefully consider what level of public ownership is necessary in order to establish the affiliate as a truly separate entity in terms of an independent motivation to grow and prosper without regard to the impact of the ILEC's profitability. ICG believes that the level of public ownership should be substantial. At a minimum, the level of public ownership should be at or above 20% in order to trigger independent tax returns.[4] The filing of independent tax returns will prevent the ILEC and its affiliate from hiding transfers that result in a loss to one entity while resulting in an overall gain by burying the transaction in aggregated figures contained in a consolidated filing. The affiliate's shareholders will thus have access to the information necessary to police the affiliate and to ensure that their—not the ILEC's—interests are being served by

the affiliate's business plans.[5] This in return will reinforce the affiliate's obligation to its shareholders.

To further ensure that the affiliate acts in the interests of its shareholders, the Commission should require that its board and management team be truly independent. No director of the affiliate nor member of its senior management should have (1) any financial interest in the ILEC or in an overall parent company or (2) any employment or consultant relationship with the ILEC or the overall parent. In addition, compensation for the affiliate's management team must be tied only to the financial performance and well-being of the affiliate, not the overall enterprise. There can be no incentive plans based on how the whole enterprise does.

2. Personnel

To ensure completely separate corporate structures, the Commission must also restrict the ability of the ILEC and its affiliate to shuffle personnel among themselves. Any requirement that the ILEC and its affiliate have separate employees would quickly become a meaningless technicality if the two companies are free to churn the same personnel back and forth.

Allowing the transfer of personnel raises a number of significant concerns. First, there is a danger that an ILEC could indirectly subsidize its advanced services affiliate by deliberately transferring to the affiliate the most highly skilled employees—including

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[4] The affiliate should also be required to make separate Securities and Exchange Commission filings.

[5] The converse would, of course, be true for the ILEC's shareholders.

employees in whom the ILEC has invested substantial training and with whom CLECs have built substantial relationships. This is not a hypothetical concern. In the course of negotiating its interconnection agreements, ICG has had the experience time and time again of having the ILEC rotate experienced personnel familiar with CLEC operational needs off of either the ILEC's negotiating team or the customer service group that works with the CLEC account. Second, there is the potential for the ILEC to transfer to its affiliate employees that have competitively sensitive information. For example, the transfer of marketing personnel who have special knowledge of the ILECs larger customers would enable the advanced services affiliate to gain a major competitive advantage over its CLEC competitors in marketing to those customers. Similarly, the transfer of engineering personnel with special technical knowledge of the operation of the ILECs network would provide the affiliate with a major competitive advantage.

While restrictions on the transfer of personnel may be difficult to police directly, the Commission could discourage the ILEC and its affiliate from shuffling personnel by putting into place measures that would make the transfer unattractive from the employee's point of view. The Commission should require employees who transfer from the ILEC to the affiliate or vice versa to start over in terms of years of service, pension and stock option vesting, and seniority status.

3. Transfer of Assets

To prevent the ILECs from avoiding their Section 251 obligations by transferring all of their operations to their affiliate, ICG agrees with the Commission that, if an ILEC transfers to its affiliate any network elements or local loops that must be provided

on an unbundled basis pursuant to Section 251(c)(3), the affiliate should be deemed to be an assign of the ILEC with respect to those network elements or loops. Notice at ¶ 105, 107. The Commission, however, should go further. *Any* transfer of a network element or loop subject to Section 251(c)(3) should render the affiliate an assign of the ILEC generally, not merely with respect to the element or loop in question. Only such a bright-line rule will prevent the ILECs from avoiding their Section 251 obligations.

Under no circumstances should the ILEC be permitted to transfer embedded customers to its affiliate without giving CLECs the opportunity to compete for those customers on a nondiscriminatory basis. The Commission addressed this issue in a similar setting in its proceeding concerning BOC marketing of CENTREX equipment through sales subsidiaries. There, the Commission rejected the compliance plans filed by Ameritech and NYNEX because the plans permitted the BOCs to convert their existing customers to their affiliates "without first offering the same opportunity to outside vendors." American Information Technologies Corp., 59 RR2d 309, 316 (1985). The Commission held that this permitted Ameritech and NYNEX to "improperly discriminate[] in favor of their own subsidiaries." *Id.* Similarly, it would give the ILECs a discriminatory advantage if they were permitted to convert their current customers to their advanced service affiliates without allowing their competitors an equal opportunity to obtain the customer.

4. Dealings Between the ILEC and its Affiliate

In the Notice, the Commission proposes to require that all transactions between the ILEC and its affiliate be on an arm's length basis and be made public. Notice at ¶ 96.

According to the Commission, this will serve to (1) ensure that CLECs receive treatment equal to that afforded by the ILEC to its advanced services affiliate and (2) prevent improper cost allocations between the ILEC and the affiliate. The Commission also proposes to generally prohibit ILECs from discriminating in favor of their affiliates. *Id.*

a. Nondiscrimination

To put some teeth into its nondiscrimination requirement, the Commission should make clear that the ILEC must deal with its affiliate on *exactly* the same basis that it deals with CLEC competitors. Among other things, this means that the affiliate must use the same OSS and other interfaces used by CLECs to purchase inputs from the ILEC. Equally as important, the ILEC must be prohibited from endorsing or recommending its affiliate to its customers. Specifically, the Commission should (1) prohibit the ILEC from transferring customer calls to its affiliate and (2) require that ILEC customers who inquire about services that are offered both by the ILEC's affiliate and competing providers should be referred in a nondiscriminatory manner.

b. Resale Prohibited

Resale is an important concern that the Commission leaves entirely unaddressed. The advanced services affiliate must not be permitted to resell the ILEC's service. If the affiliate is allowed to do so, then it can circumvent the ILEC's obligation to provide service at tariffed rates and on a nondiscriminatory basis by purchasing services from the ILEC under tariff and then re-pricing those services to its subscribers as it sees fit. This in turn allows the ILEC to use its advanced services affiliate as a shield against competition. If an ILEC is threatened with the loss of a customer because a CLEC is able to underprice its

service offering, it would be able to provide the service offering on a resale basis to its affiliate, which could then price the service as necessary to prevent losing the customer. From the perspective of the ILEC's overall corporate enterprise, it is far better to keep the customer within the enterprise at reduced profits, and to block a competitor from gaining the revenue, than to lose the customer.

5. Co-Branding

The Commission must ensure that the advanced services affiliate is not able to gain an unfair advantage over its CLEC competitors by trading on the brand recognition and goodwill of its ILEC counterpart. The affiliates are likely to brand their service offerings under a name very similar to their ILEC partner's in order to take advantage of the corresponding goodwill. For example, BellSouth's existing CLEC is known as BellSouth BSE and BellSouth has indicated that BellSouth BSE will make use of BellSouth's trademark depicting a bell. Therefore, a consumer that wants service from "BellSouth" may have little reason to know or care if it is provided by the ILEC or by the similarly-named affiliate. To prevent the affiliate from receiving an unfair advantage from its counterpart ILEC's branding, the Commission should require advanced services affiliates to market themselves as wholly separate identities under names and identifying logos clearly different from their ILEC counterpart's.

6. Relationship of Advanced Services Affiliate to CLECs

In addition to putting into place the measures necessary to ensure that the ILEC and its advanced services affiliate are sufficiently independent, the Commission also must ensure that the affiliates comply with their obligations under Section 251 with respect to

CLECs. While, under the Commission's proposal, an advanced services affiliate meeting the necessary requirements would not be bound by the obligations placed on ILECs by Section 251(c), they would, of course, be bound like any other LEC by the requirements of Section 251(a). Under Section 251(a), the affiliates would be required to interconnect their data networks with other carriers, including CLECs. 47 U.S.C. § 251(a). The Commission should make this point absolutely clear. With more and more traffic being moved off the circuit-switched network and on to advanced data networks it is critical that CLECs are able to interconnect their networks with other data networks to ensure that their customers can reach other carriers' subscribers.

II. The Commission Should Take Extensive Measures to Promote Competition in the Local Market by Supporting the CLECs' Ability to Compete

A. Collocation Requirements

1. National Standards

The Commission should adopt national standards for collocation for all services. The standards should reflect a fundamental re-thinking of the traditional collocation arrangements currently being offered by ILECs.[6] Existing collocation arrangements, which vary widely from ILEC to ILEC and central office to central office, are inefficient, expensive, and too complex for the needs of today's competitive entrants. National standards will help bring certainty and stability to new entrants and, therefore, encourage

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[6] The Commission should refer to the extensive white paper on collocation by CompTel, entitled: Uncaging Competition: Reforming Collocation for the 21st Century,

the deployment of an advanced services network. The individual states should, of course, retain the option of imposing additional requirements.

2. Collocation Equipment

ICG agrees with the Commission's tentative conclusion that "incumbent LECs should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that competing carriers may collocate." Notice at ¶ 129. Such restrictions are vestiges of the past. For example, it would not serve anyone's purpose to differentiate between circuit-switched and packet-switched equipment in determining which type of equipment may be collocated. The Commission has never advanced any meaningful reason for not requiring ILECs to collocate switching equipment. Instead, the approach of restricting switching equipment appears to be left over from the Expanded Interconnection proceeding, which reflects an overly-cautious first generation collocation approach that does not fit with the competitive local marketplace envisioned by the Commission today.[7] The Commission in the Local Competition Order stated that it would reexamine the issue of collocation of switching equipment at a later date "if it appears that such action would further achievement of the 1996's Act's procompetitive goals." Local Competition Order at 15795. Obviously, the

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September 1998 ("CompTel White Paper"). ICG, which is a member of CompTel, has relied in part on the analysis set forth in that white paper.

[7] See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC Rcd 15499, 15795 (1996) ("Local Competition Order").

time is now for the Commission to reexamine in this proceeding its earlier approach and eliminate any restrictions in the collocation of switching equipment.

The Commission should go a step further and adopt rules permitting the collocation of *any* equipment used by carriers in the provision of local exchange or exchange access voice and data services. The sole criteria for determining whether a particular type of equipment may be collocated should be its size and the space available at the location in question. Leaving the door open for the ILECs to impose any other restrictions simply invites them to act as network police against their competitors. In addition, whether or not a particular piece or type of equipment is collocated by an affiliate of the ILEC -- if any,[8] the ILEC should allow CLECs to collocate the equipment required by the CLEC for its offerings.

Any restrictions that are based on a particular type of equipment will likely become obsolete very quickly, as the pace of technological change continues to blur the distinctions between types of telecommunications equipment. Nor should the ILEC be allowed impose restrictions based on the use of the equipment. Much equipment today is multi-functional and cannot readily be classified by use. As the Notice appears to foresee, the use of increasingly multi-functional, integrated equipment will likely be an important

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[8] The Commission's Notice seeks comment in a number of areas about whether the CLEC should receive service equal to that provided by an ILEC to the ILEC's advanced services affiliate. ICG argues above in these comments that the Commission should *not* permit the ILECs to establish affiliates for the purpose of offering advanced services. Any statement by ICG concerning an ILEC affiliate should *not* be construed as support for such an entity. Instead, references to ILEC affiliate are made only to respond to the specific language of the Notice.

means of achieving greater cost efficiency. Id. The Commission should not allow the ILECs to forestall that likelihood.

In addition, the ILEC should not be able to advance unilaterally routine, non-specific network safety concerns as a way of precluding the collocation of any equipment. The Commission is correct in observing that "[s]ome performance and reliability requirements...may not be necessary to protect LEC equipment" and "may increase costs unnecessarily." Notice at ¶ 134. Any piece of equipment that meets industry standards should be allowed for collocation, as long as the equipment is certified that it will not harm the network. The network-harm standard is consistent with the standard the Commission has required in other areas, such as Part 68 of the Commission's rules.[9] In addition, a CLEC should be able to use any type of equipment that the ILEC uses, without the need for the CLEC to obtain certification.[10] All equipment specifications and safety requirements must apply equally to the ILEC, ILEC affiliates (if any), and all CLECs.

The Commission should draw the line elsewhere, however on collocation equipment. The Commission should not permit collocation of equipment used by non-carriers, as such equipment could exacerbate any potential space exhaustion problems. ICG

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[9] See also Hush-A-Phone v. United States, 20 FCC 391 (1955), under which network equipment must be privately beneficial without being publicly detrimental. CLECs are seeking to collocate equipment that would be privately *and publicly beneficial.*

[10] To the extent that an ILEC wants to impose additional safety requirements, such requirements must be for a specific and justifiable purpose. The requirements must also be narrowly tailored to achieve the stated purpose. ILEC safety requirements meeting this test should be permitted to go into effect only after the ILEC has notified each CLEC customer at least one year prior to the effective date to ensure that all parties can plan around such contingencies.